

BILL LOCKYER, Attorney General
of the State of California
BARRY D. LADENDORF, State Bar No. 52548
Supervising Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2063
Facsimile: (619) 645-2061

Attorneys for Complainant

**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation
Against:

MICHAEL MALACZEWSKI
3504 E 1st Avenue, #7
Long Beach, CA 90803

Physical Therapist License No. PT 28993

Respondent.

Case No. ID 2004 63740
and ID 2004 63939

**FIRST AMENDED
ACCUSATION**

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about December 11, 2003, the Physical Therapy Board of California issued Physical Therapist License No. PT 28993 to MICHAEL MALACZEWSKI (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2005, unless renewed.

///

//

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

7
8
9
0
1
2
3
4
5
6
7
8

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

4
5
6
7
8

5
6
7
8

1 license, when the time for appeal has elapsed, or the judgement of conviction has been affirmed
2 on appeal or when an order granting probation is made suspending the imposition of sentence,
3 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person
4 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
5 of guilty, or dismissing the accusation, information, or indictment.

6 COST RECOVERY

7 7. Section 2661.5 of the Code states:

8 (a) In any order issued in resolution of a disciplinary proceeding before
9 the board, the board may request the administrative law judge to direct any
10 licensee found guilty of unprofessional conduct to pay to the board a sum not to
11 exceed the actual and reasonable costs of the investigation and prosecution of the
12 case.

13 FIRST CAUSE FOR DISCIPLINE

14 (Conviction of a Crime)

15 8. Respondent is subject to disciplinary action under Code sections 2660(d)
16 and 2660(i), in that he was convicted of a crime substantially related to the qualifications,
17 functions, or duties of a physical therapist. The circumstances are as follows:

18 Conviction of August 15, 2000

19 A. On or about July 21, 2000, Respondent was arrested and
20 cited for shoplifting a videotape from a store in violation of violating 2C-20-11
21 [shoplifting].

22 B. A Complaint was filed in Municipal Court, Borough of
23 Brooklawn, in the State of New Jersey, entitled *The State of New Jersey vs.*
24 *Michael T. Malaczewski*, charging Respondent with violating Statute No. 2C-20-
25 11 [shoplifting].

26 C. On or about August 15, 2000, Respondent pled guilty to
27 violating a city ordinance of disturbing the peace and was fined.
28

1 **Conviction of August 16, 2004**

2 D. On or about July 18, 2004, while a patrol vehicle was
3 waiting for a tow truck to hook a vehicle up, Respondent struck the patrol vehicle
4 from behind. The force of the impact caused the patrol vehicle to hit the vehicle
5 on the tow truck, which hit the tow truck operator causing injury to the tow truck
6 operator. Respondent refused to submit to field sobriety tests and was
7 subsequently arrested for driving under the influence of alcohol in violation of
8 California Vehicle Code section 23152(a) and 23152(b).

9 E. On or about July 22, 2004, a Complaint was file in Superior
10 Court of the State of California, County of Los Angeles, entitled *The People of the*
11 *State of California v. Michael Thomas Malaczewski*, Case No. 04LL01233,
12 charging Respondent with Count 1 - violating Vehicle Code section 23152(a)
13 [driving while under the influence of alcohol] and Count 2 - violating Vehicle
14 Code section 23152(b) [driving while having 0.08% or more, by weight of alcohol
15 in her blood].

16 F. On or about August 16, 2004, Respondent pled nolo
17 contendere and was convicted of Count 2- violating Vehicle Code section
18 23152(b). He was granted summary probation with terms and conditions.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Dishonest Acts)**

21 9. Respondent is further subject to disciplinary action under Code section
22 2660(1), in that he committed dishonest acts when he failed to disclose his 2000 conviction on his
23 application for licensure and . The circumstances are as follows:

24 A. Complainant incorporates paragraph 8 above as if fully
25 realleged;

26 ///

27 ///

28 ///

1 B. On or about July 1, 2003, Respondent signed his
2 application for licensure as a physical therapist under penalty of perjury.
3 Respondent disclosed a 2001 driving under the influence conviction on his
4 application for licensure;

5 C. On December 11, 2003, Respondent was issued Physical
6 Therapy License No. PT 28993 based on the information he provided on his
7 application;

8 D. Respondent failed to disclose his August 15, 2000,
9 conviction on his application for licensure (application dated July 1, 2003).

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Physical Therapy Board of California issue a
13 decision:

14 1. Revoking or suspending Physical Therapist License No. PT 28993, issued
15 to MICHAEL MALACZEWSKI;

16 2. Ordering Michael Malaczewski to pay the Physical Therapy Board of
17 California the reasonable costs of the investigation and enforcement of this case, pursuant to
18 Business and Professions Code section 2661.3;

19 3. Taking such other and further action as deemed necessary and proper.

20 DATED: December 13, 2004.

21
22
23 Original Signed By:
24 STEVEN K. HARTZELL
25 Executive Officer
26 Physical Therapy Board of California
27 Department of Consumer Affairs
28 State of California
Complainant